IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 252 OF 1981

M/s. Shah Construction Co. Ltd. ... Plaintiffs

V/s

Vidyarthi Rai & ors. ... Defendants

Mr. A.S. Doctor i/by M.J. & Madan for the plaintiffs.

None present for the defendants.

CORAM: P.V. KAKADE, J.

DATED: 1ST DEC., 2005

P.C.:

1. Heard advocate for the plaintiffs. None present for the defendants. No written statement has been filed on behalf of the defendants. The suit proceeded ex-parte against the defendants by virtue of order dated 13th Sept., 2005. The affidavit of service is filed on record.

2. The plaintiffs filed the suit for perpetual injunction against the defendants and other consequential reliefs alleging that the plaintiffs are owners of the property admeasuring 20 acres of land situated at Ambivali Village, at Veera Desai Road,

Andheri (West), Mumbai. Prior to 3.7.1964 plaintiffs were also owners of the impugned property which is shown in the plaint. It is the case of plaintiffs that defendants are trespassers of the portion of the land shown in brown colour of the plan attached to the plaint vide Exh.A. In addition, there are several other persons who are trespassers on the said portion of the land. Plaintiffs are suing the defendants by themselves and as representing the other trespassers, as such persons are numerous and have common interest but plaintiffs do not know names of other persons. It is the case of plaintiffs that defendants 3, 5 and 7 are trespassers having hutments or Kutcha construction on the portion shown in brown colour on the west side of the portion of the plan Exh.A to the plaint. Apart from defendants 3, 5 and 7, there are no other trespassers of the west side of the portion shown as noted above. Other defendants and some other persons are also trespassers. Plaintiffs have made out a case that prior to 1971 plaintiffs had already constructed a boundary wall around a portion of the said land admeasuring 20 acres and they wanted to construct further boundary wall as shown in the map annexed to the plaint. In January, 1981, plaintiffs constructed a portion of the said wall between points "X" and "Y" as shown in the map. The

defendants and other trespassers thereafter obstructed and prevented plaintiffs from completing the construction of the balance boundary wall and even demolished a portion of the boundary wall constructed by plaintiffs and hence the suit.

3. Perused the documents on record alongwith other relevant record including the annexed map. It is to be noted that the entire evidence of the plaintiffs has gone unchallenged on record and, as such, there is no doubt that the suit deserves to be decreed.

4. Hence, the suit is hereby decreed in terms of prayer clause (a) and stands disposed of with no order as to costs. Draw decree accordingly.

.....